

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
WILLIAM A. GROSS CONSTRUCTION ASSOCIATES,
INC.,

Plaintiff,

- against -

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Defendant.

----- x
AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Third-Party Plaintiff,

- against -

CAULDWELL WINGATE COMPANY, LLC,

Third party plaintiff.

----- x
CAULDWELL WINGATE COMPANY, LLC,

Fourth-Party Plaintiff,

- against -

DORMITORY AUTHORITY OF THE STATE OF NEW
YORK,

Fourth-Party Defendant.

----- x

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07-CV-10639 (LAK) (AJP)

**ANSWER AND JURY DEMAND
OF FIFTH PARTY DEFENDANT
TRACTEL LTD - SWINGSTAGE
DIVISION**

x

DORMITORY AUTHORITY OF THE STATE OF NEW
YORK,

Fifth-Party Plaintiff,

- against -

A. WILLIAMS TRUCKING & BACKHOE TRENCHING,
INC., ASPRO MECHANICAL CONTRACTORS, INC.,
BEAUBOIS CANADA, INC., BOVIS LEND LEASE LMB,
INC., CNA SURETY CORPORATION D/B/A AMERICAN
CASUALTY COMPANY OF READING, PA, DIERKS
HEATING COMPANY, INC., ENCLOS CORPORATION,
FIVE STAR ELECTRIC CORPORATION, FUTURE TECH
CONSULTANTS OF NEW YORK, INC., HERITAGE AIR
SYSTEMS, INC., HUGH O'KANE ELECTRIC CO., LLC,
MATERIALS TESTING LAB, INC., PYRAMID FIRE
PROTECTION, INC., RAFAEL VINOLY ARCHITECTS
P.C., SMI-OWEN STEEL COMPANY, INC., STONEWALL
CONTRACTING CORPORATION, TRACTEL LTD.
SWINGSTAGE DIVISION,

Fifth-Party Defendant x

Defendant TRACTEL LTD. SWINGSTAGE DIVISION. ("Tractel"), by and through its counsel,
McCarter & English, LLP responds to Fifth Party Plaintiff Dormitory Authority Of The State Of
New York's ("DASNY") Fifth Party Complaint as follows:

NATURE OF THE ACTION

1. Tractel denies the allegations contained in paragraph "1" of the Fifth Party
Complaint to the extent they are directed against Tractel, and otherwise denies having knowledge
or information sufficient to form a belief as to the truth of the allegations contained in paragraph
"1".

2. Tractel denies the allegations contained in paragraph "2" of the Fifth Party
Complaint to the extent they are directed against Tractel, except admits that Tractel was engaged

by DASNY pursuant to a written agreement dated March 1, 2004, and refers to the agreement for the terms and conditions contained therein. Tractel otherwise denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “2”.

JURISDICTION AND VENUE

3. Paragraph “3” of the Fifth Party Complaint comprises a statement of legal opinion to which no responsive pleading is required.

4. Paragraph “4” of the Fifth Party Complaint comprises a statement of legal opinion to which no responsive pleading is required.

PARTIES

5. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “5” of the Fifth Party Complaint.

6. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Fifth Party Complaint.

7. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the Fifth Party Complaint.

8. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “8” of the Fifth Party Complaint.

9. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the Fifth Party Complaint.

10. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the Fifth Party Complaint.

11. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the Fifth Party Complaint.

12. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the Fifth Party Complaint.

13. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the Fifth Party Complaint.

14. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the Fifth Party Complaint.

15. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “15” of the Fifth Party Complaint.

16. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “16” of the Fifth Party Complaint.

17. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “17” of the Fifth Party Complaint.

18. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “18” of the Fifth Party Complaint.

19. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “19” of the Fifth Party Complaint.

20. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “20” of the Fifth Party Complaint.

21. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “21” of the Fifth Party Complaint.

22. Tractel denies the allegations contained in paragraph “22” of the Fifth Party Complaint except admits that Tractel Ltd., a corporation duly organized and existing under the laws of Canada, maintains an office located at 110 Shawmut Road, Canton, Massachusetts 01021.

FACTUAL ALLEGATIONS

23. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “23” of the Fifth Party Complaint.

24. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “24” of the Fifth Party Complaint.

25. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “25” of the Fifth Party Complaint.

26. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “26” of the Fifth Party Complaint.

27. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “27” of the Fifth Party Complaint.

28. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “28” of the Fifth Party Complaint.

The Project Contracts and Problems Encountered During the Project

29. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “29” of the Fifth Party Complaint.

The Project Design

30. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “30” of the Fifth Party Complaint.

31. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “31” of the Fifth Party Complaint.

32. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “32” of the Fifth Party Complaint.

33. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “33” of the Fifth Party Complaint.

34. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “34” of the Fifth Party Complaint.

35. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “35” of the Fifth Party Complaint.

Construction Management

36. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “36” of the Fifth Party Complaint.

37. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “37” of the Fifth Party Complaint.

38. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “38” of the Fifth Party Complaint.

39. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “39” of the Fifth Party Complaint.

40. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “40” of the Fifth Party Complaint.

41. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “41” of the Fifth Party Complaint.

Excavation and Foundation Work

42. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “42” of the Fifth Party Complaint.

43. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “43” of the Fifth Party Complaint.

44. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “44” of the Fifth Party Complaint.

45. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “45” of the Fifth Party Complaint.

46. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “46” of the Fifth Party Complaint.

Structural Steel Work

47. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “47” of the Fifth Party Complaint.

48. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “48” of the Fifth Party Complaint.

49. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “49” of the Fifth Party Complaint.

50. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “50” of the Fifth Party Complaint.

51. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “51” of the Fifth Party Complaint.

52. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “52” of the Fifth Party Complaint.

53. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “53” of the Fifth Party Complaint.

54. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “54” of the Fifth Party Complaint.

55. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “55” of the Fifth Party Complaint.

56. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “56” of the Fifth Party Complaint.

57. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “57” of the Fifth Party Complaint.

58. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “58” of the Fifth Party Complaint.

59. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “59” of the Fifth Party Complaint.

60. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “60” of the Fifth Party Complaint.

Exterior Work

61. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “61” of the Fifth Party Complaint.

62. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “62” of the Fifth Party Complaint.

General Contract Work

63. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “63” of the Fifth Party Complaint.

64. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “64” of the Fifth Party Complaint.

65. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “65” of the Fifth Party Complaint.

66. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “66” of the Fifth Party Complaint.

Heating, Ventilation and Air Conditioning (“HVAC”)

67. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “67” of the Fifth Party Complaint.

68. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “68” of the Fifth Party Complaint.

69. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “69” of the Fifth Party Complaint.

70. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “70” of the Fifth Party Complaint.

Sheet Metal Work

71. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “71” of the Fifth Party Complaint.

72. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “72” of the Fifth Party Complaint.

73. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “73” of the Fifth Party Complaint.

74. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “74” of the Fifth Party Complaint.

Plumbing

75. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “75” of the Fifth Party Complaint.

76. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “76” of the Fifth Party Complaint.

77. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “77” of the Fifth Party Complaint.

Fire Protection

78. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “78” of the Fifth Party Complaint.

79. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “79” of the Fifth Party Complaint.

Building Power and Fire Alarm Systems

80. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “80” of the Fifth Party Complaint.

81. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “81” of the Fifth Party Complaint.

82. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “82” of the Fifth Party Complaint.

Low Voltage Electrical Work

83. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “83” of the Fifth Party Complaint.

84. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “84” of the Fifth Party Complaint.

Millwork

85. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “85” of the Fifth Party Complaint.

86. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “86” of the Fifth Party Complaint.

87. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “87” of the Fifth Party Complaint.

Façade Maintenance

88. Tractel denies the allegations contained in paragraph “88” of the Fifth Party Complaint except admits that it entered into a contract with DASNY dated March 1, 2004, and

refers to the contract and any associated change orders for the terms and conditions contained therein.

89. Tractel denies the allegations contained in paragraph “89” of the Fifth Party Complaint.

Testing

90. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “90” of the Fifth Party Complaint.

91. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “91” of the Fifth Party Complaint.

92. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “92” of the Fifth Party Complaint.

93. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “93” of the Fifth Party Complaint.

94. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “94” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FIRST CLAIM FOR RELIEF

95. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “94” of the Fifth Party Complaint as if fully set forth herein.

96. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “96” of the Fifth Party Complaint.

97. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “97” of the Fifth Party Complaint.

98. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “98” of the Fifth Party Complaint.

99. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “99” of the Fifth Party Complaint.

100. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “100” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE SECOND CLAIM FOR RELIEF

101. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “100” of the Fifth Party Complaint as if fully set forth herein.

102. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “102” of the Fifth Party Complaint.

103. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “103” of the Fifth Party Complaint.

104. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “104” of the Fifth Party Complaint.

105. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “105” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRD CLAIM FOR RELIEF

106. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “105” of the Fifth Party Complaint as if fully set forth herein.

107. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “107” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FOURTH CLAIM FOR RELIEF

108. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “107” of the Fifth Party Complaint as if fully set forth herein.

109. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “109” of the Fifth Party Complaint.

110. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “110” of the Fifth Party Complaint.

111. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “111” of the Fifth Party Complaint.

112. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “112” of the Fifth Party Complaint.

113. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “113” of the Fifth Party Complaint.

114. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “114” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FIFTH CLAIM FOR RELIEF

115. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “114” of the Fifth Party Complaint as if fully set forth herein.

116. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “116” of the Fifth Party Complaint.

117. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “117” of the Fifth Party Complaint.

118. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “118” of the Fifth Party Complaint.

119. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “119” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE SIXTH CLAIM FOR RELIEF

120. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “119” of the Fifth Party Complaint as if fully set forth herein.

121. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “121” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE SEVENTH CLAIM FOR RELIEF

122. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “121” of the Fifth Party Complaint as if fully set forth herein.

123. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “123” of the Fifth Party Complaint.

124. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “124” of the Fifth Party Complaint.

125. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “125” of the Fifth Party Complaint.

126. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “126” of the Fifth Party Complaint.

127. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “127” of the Fifth Party Complaint.

128. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “128” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE EIGHTH CLAIM FOR RELIEF

129. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “128” of the Fifth Party Complaint as if fully set forth herein.

130. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “130” of the Fifth Party Complaint.

131. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “131” of the Fifth Party Complaint.

132. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “132” of the Fifth Party Complaint.

133. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “133” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE NINTH CLAIM FOR RELIEF

134. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “133” of the Fifth Party Complaint as if fully set forth herein.

135. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “135” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TENTH CLAIM FOR RELIEF

136. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “135” of the Fifth Party Complaint as if fully set forth herein.

137. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “137” of the Fifth Party Complaint.

138. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “138” of the Fifth Party Complaint.

139. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “139” of the Fifth Party Complaint.

140. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “140” of the Fifth Party Complaint.

141. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “141” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE ELEVENTH CLAIM FOR RELIEF

142. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “141” of the Fifth Party Complaint as if fully set forth herein.

143. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “143” of the Fifth Party Complaint.

144. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “144” of the Fifth Party Complaint.

145. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “145” of the Fifth Party Complaint.

146. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “146” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWELFTH CLAIM FOR RELIEF

147. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “146” of the Fifth Party Complaint as if fully set forth herein.

148. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “148” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTEENTH CLAIM FOR RELIEF

149. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “148” of the Fifth Party Complaint as if fully set forth herein.

150. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “150” of the Fifth Party Complaint.

151. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “151” of the Fifth Party Complaint.

152. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “152” of the Fifth Party Complaint.

153. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “153” of the Fifth Party Complaint.

154. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “154” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FOURTEENTH CLAIM FOR RELIEF

155. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “154” of the Fifth Party Complaint as if fully set forth herein.

156. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “156” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FIFTEENTH CLAIM FOR RELIEF

157. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “156” of the Fifth Party Complaint as if fully set forth herein.

158. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “158” of the Fifth Party Complaint.

159. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “159” of the Fifth Party Complaint.

160. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “160” of the Fifth Party Complaint.

161. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “161” of the Fifth Party Complaint.

162. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “162” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE SIXTEENTH CLAIM FOR RELIEF

163. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “162” of the Fifth Party Complaint as if fully set forth herein.

164. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “164” of the Fifth Party Complaint.

165. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “165” of the Fifth Party Complaint.

166. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “166” of the Fifth Party Complaint.

167. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “167” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE SEVENTEENTH CLAIM FOR RELIEF

168. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “167” of the Fifth Party Complaint as if fully set forth herein.

169. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “169” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE EIGHTEENTH CLAIM FOR RELIEF

170. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “169” of the Fifth Party Complaint as if fully set forth herein.

171. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “171” of the Fifth Party Complaint.

172. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “172” of the Fifth Party Complaint.

173. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “17” of the Fifth Party Complaint.

174. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “174” of the Fifth Party Complaint.

175. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “175” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE NINETEENTH CLAIM FOR RELIEF

176. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “175” of the Fifth Party Complaint as if fully set forth herein.

177. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “177” of the Fifth Party Complaint.

178. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “178” of the Fifth Party Complaint.

179. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “179” of the Fifth Party Complaint.

180. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “180” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTIETH CLAIM FOR RELIEF

181. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “180” of the Fifth Party Complaint as if fully set forth herein.

182. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “182” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTY-FIRST CLAIM FOR RELIEF

183. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “182” of the Fifth Party Complaint as if fully set forth herein.

184. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “184” of the Fifth Party Complaint.

185. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “185” of the Fifth Party Complaint.

186. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “186” of the Fifth Party Complaint.

187. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “187” of the Fifth Party Complaint.

188. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “188” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTY-SECOND CLAIM FOR RELIEF

189. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “188” of the Fifth Party Complaint as if fully set forth herein.

190. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “190” of the Fifth Party Complaint.

191. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “191” of the Fifth Party Complaint.

192. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “192” of the Fifth Party Complaint.

193. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “193” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTY-THIRD CLAIM FOR RELIEF

194. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “193” of the Fifth Party Complaint as if fully set forth herein.

195. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “190” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTY-FOURTH CLAIM FOR RELIEF

196. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “195” of the Fifth Party Complaint as if fully set forth herein.

197. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “197” of the Fifth Party Complaint.

198. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “198” of the Fifth Party Complaint.

199. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “199” of the Fifth Party Complaint.

200. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “200” of the Fifth Party Complaint.

201. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “201” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTY-FIFTH CLAIM FOR RELIEF

202. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “201” of the Fifth Party Complaint as if fully set forth herein.

203. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “203” of the Fifth Party Complaint.

204. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “204” of the Fifth Party Complaint.

205. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “205” of the Fifth Party Complaint.

206. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “206” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTY-SIXTH CLAIM FOR RELIEF

207. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “206” of the Fifth Party Complaint as if fully set forth herein.

208. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “208” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTY-SEVENTH CLAIM FOR RELIEF

209. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “208” of the Fifth Party Complaint as if fully set forth herein.

210. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “210” of the Fifth Party Complaint.

211. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “211” of the Fifth Party Complaint.

212. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “212” of the Fifth Party Complaint.

213. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “213” of the Fifth Party Complaint.

214. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “214” of the Fifth Party Complaint.

215. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “215” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTY-EIGHTH CLAIM FOR RELIEF

216. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “215” of the Fifth Party Complaint as if fully set forth herein.

217. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “217” of the Fifth Party Complaint.

218. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “218” of the Fifth Party Complaint.

219. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “219” of the Fifth Party Complaint.

220. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “220” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE TWENTY-NINTH CLAIM FOR RELIEF

221. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “220” of the Fifth Party Complaint as if fully set forth herein.

222. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “222” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTIETH CLAIM FOR RELIEF

223. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “222” of the Fifth Party Complaint as if fully set forth herein.

224. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “224” of the Fifth Party Complaint.

225. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “225” of the Fifth Party Complaint.

226. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “226” of the Fifth Party Complaint.

227. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “227” of the Fifth Party Complaint.

228. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “228” of the Fifth Party Complaint.

229. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “229” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTY-FIRST CLAIM FOR RELIEF

230. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “229” of the Fifth Party Complaint as if fully set forth herein.

231. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “231” of the Fifth Party Complaint.

232. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “232” of the Fifth Party Complaint.

233. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “233” of the Fifth Party Complaint.

234. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “234” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTY-SECOND CLAIM FOR RELIEF

235. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “234” of the Fifth Party Complaint as if fully set forth herein.

236. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “236” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTY-THIRD CLAIM FOR RELIEF

237. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “236” of the Fifth Party Complaint as if fully set forth herein.

238. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “238” of the Fifth Party Complaint.

239. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “239” of the Fifth Party Complaint.

240. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “240” of the Fifth Party Complaint.

241. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “241” of the Fifth Party Complaint.

242. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “242” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTY-FOURTH CLAIM FOR RELIEF

243. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “242” of the Fifth Party Complaint as if fully set forth herein.

244. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “244” of the Fifth Party Complaint.

245. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “245” of the Fifth Party Complaint.

246. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “246” of the Fifth Party Complaint.

247. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “247” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTY-FIFTH CLAIM FOR RELIEF

248. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “247” of the Fifth Party Complaint as if fully set forth herein.

249. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “249” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTY-SIXTH CLAIM FOR RELIEF

250. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “249” of the Fifth Party Complaint as if fully set forth herein.

251. Tractel denies the allegations contained in paragraph “251” of the Fifth Party Complaint and respectfully refers to the contract between Tractel and DASNY for the terms and conditions contained therein.

252. Tractel denies the allegations contained in paragraph “252” of the Fifth Party Complaint.

253. Tractel denies the allegations contained in paragraph “253” of the Fifth Party Complaint.

254. Tractel denies the allegations contained in paragraph “254” of the Fifth Party Complaint.

255. Tractel denies the allegations contained in paragraph “255” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTY-SEVENTH CLAIM FOR RELIEF

256. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “255” of the Fifth Party Complaint as if fully set forth herein.

257. Paragraph “257” of the Fifth Party Complaint is a prayer for relief to which no responsive pleading is required.

AS AND FOR AN ANSWER TO THE THIRTY-EIGHTH CLAIM FOR RELIEF

258. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “257” of the Fifth Party Complaint as if fully set forth herein.

259. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “259” of the Fifth Party Complaint.

260. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “260” of the Fifth Party Complaint.

261. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “261” of the Fifth Party Complaint.

262. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “262” of the Fifth Party Complaint.

263. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “263” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE THIRTY-NINTH CLAIM FOR RELIEF

264. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “263” of the Fifth Party Complaint as if fully set forth herein.

265. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “265” of the Fifth Party Complaint.

266. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “266” of the Fifth Party Complaint.

267. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “267” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FORTIETH CLAIM FOR RELIEF

268. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “267” of the Fifth Party Complaint as if fully set forth herein.

269. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “269” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FORTY-FIRST CLAIM FOR RELIEF

270. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “269” of the Fifth Party Complaint as if fully set forth herein.

271. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “271” of the Fifth Party Complaint.

272. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “272” of the Fifth Party Complaint.

273. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “273” of the Fifth Party Complaint.

274. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “274” of the Fifth Party Complaint.

275. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “275” of the Fifth Party Complaint.

276. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “276” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FORTY-SECOND CLAIM FOR RELIEF

277. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “276” of the Fifth Party Complaint as if fully set forth herein.

278. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “278” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FORTY-THIRD CLAIM FOR RELIEF

279. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “278” of the Fifth Party Complaint as if fully set forth herein.

280. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “280” of the Fifth Party Complaint.

281. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “281” of the Fifth Party Complaint.

282. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “282” of the Fifth Party Complaint.

283. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “283” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FORTY-FOURTH CLAIM FOR RELIEF

284. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “283” of the Fifth Party Complaint as if fully set forth herein.

285. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “285” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FORTY-FIFTH CLAIM FOR RELIEF

286. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “285” of the Fifth Party Complaint as if fully set forth herein.

287. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “287” of the Fifth Party Complaint.

288. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “288” of the Fifth Party Complaint.

289. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “289” of the Fifth Party Complaint.

AS AND FOR AN ANSWER TO THE FORTY-SIXTH CLAIM FOR RELIEF

290. Tractel repeats, realleges and reiterates each and every response to paragraphs “1” through “289” of the Fifth Party Complaint as if fully set forth herein.

291. Tractel denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “291” of the Fifth Party Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

292. The Fifth Party Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

293. DASNY’s claims are barred in whole or in part by the express provisions of its contract with Tractel, Ltd.

THIRD AFFIRMATIVE DEFENSE

294. DASNY’s claims are barred by waiver, estoppel and laches.

FOURTH AFFIRMATIVE DEFENSE

295. DASNY's claims are barred by the equitable doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

296. DASNY's claims are barred in whole or in part by the doctrine of accord and satisfaction.

SIXTH AFFIRMATIVE DEFENSE

297. DASNY's claims are subject to applicable set offs.

SEVENTH AFFIRMATIVE DEFENSE

298. DASNY's claims are limited by its own breach of contract.

EIGHTH AFFIRMATIVE DEFENSE

299. The injuries, damages, and losses alleged in the Fifth Party Complaint, none being admitted, were caused in whole or in part by the negligence of the Fifth Party Plaintiff and/or others over whom Tractel exercised no control, had no opportunity or right to control, and with whom Tractel had no legal relationship by which liability could be attributed to it.

NINTH AFFIRMATIVE DEFENSE

300. Fifth Party Plaintiff's alleged loss, damage, injury, harm, expense, diminution, or deprivation alleged, if any, was caused in whole or in part by Fifth Party Plaintiff's failure to exercise reasonable care and diligence to mitigate Plaintiff's alleged damages.

TENTH AFFIRMATIVE DEFENSE

301. The injuries or damages allegedly sustained by Fifth Party Plaintiff can be attributed to several causes and accordingly should be apportioned among the various causes according to respective contribution of each such cause to the harm sustained, if any. If any liability is found against Tractel, then said liability will constitute 50% or less of the total

liability assigned to all persons liable, and as such, the liability of Tractel to Fifth Party Plaintiff for non-economic loss shall be limited, and shall not exceed Tractel's equitable share.

ELEVENTH AFFIRMATIVE DEFENSE

302. Any verdict or judgment rendered against Tractel must be reduced by those amounts that have been, or will, with reasonable certainty, replace or indemnify Fifth Party Plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance.

TWELFTH AFFIRMATIVE DEFENSE

303. Tractel hereby gives notice that it intends to rely upon such other defenses as may become available or apparent during the course of discovery and thus reserves the right to amend this list to assert such defenses.

JURY DEMAND

304. Tractel demands a trial by jury on all issues triable in this action.

Dated: New York, New York
August 18, 2008

McCarter & English, LLP

/s/ Robert S. Bernstein
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